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AMENDED IN ASSEMBLY APRIL 2, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 566

Introduced by Assembly Member Wieckowski
(Coauthors: Assembly Members Alejo, Bocanegra, Chau, Dickinson,
Garcia, Gomez, Jones-Sawyer, Muratsuchi, Perea, Rendon,
Skinner, Stone, and Williams)

February 20, 2013

An act to add Section 71621 to the Government Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 566, as amended, Wieckowski. Courts: personal services contracting.

The Trial Court Employment Protection and Governance Act establishes a trial court employee personnel system that provides authority to hire trial court personnel, regulates the classification and compensation of trial court employees, labor relations, and personnel files, and requires each trial court to establish a system of employment selection and advancement and an employment protection system.

Existing law authorizes state agencies to use personal services contracts to achieve cost savings if specified standards are satisfied,

including, among other things, the contract does not cause the displacement of civil service employees and the contract is awarded through a publicized, competitive bidding process. The State Personnel Board is required to review a proposed contract upon the request of an employee organization for compliance with those standards.

This bill would establish specified standards if a trial court intends to enter into a new contract, or renew or extend an existing contract, for any services that are currently or customarily performed by that trial court's employees, or that were performed or customarily performed by that trial court's employees as of July 1, 2012. Among other things, the bill would require the trial court to clearly demonstrate that the contract will result in actual overall cost savings to the trial court for the duration of the entire contract as compared with the trial court's actual costs of providing the same services. The bill would require a contract for services in excess of \$100,000 annually to include specific, measurable performance standards and provisions for audits on performance and cost savings, as specified.

This bill would provide that these standards apply to any contract entered into, renewed, or extended after the effective date of this measure, ~~but that a contract entered into, renewed, or extended by a trial court between the date this measure is enacted and the date this measure becomes operative that does not comply with these standards shall terminate 90 days after the date this measure becomes operative, as specified.~~ The bill would provide that its provisions do not apply to a contract under specified circumstances, including when services are incidental to a contract for the purchase or lease of real or personal property.

This bill would require each trial court to provide a report by February 1, 2014, to the chairperson of the Joint Legislative Budget Committee and the chairpersons of the Senate Judiciary Committee and the Assembly Judiciary Committee if the trial court entered into a contract between July 1, 2013, and the effective date of this measure for services that were provided or are customarily provided by its trial court employees if the contract has a term extending beyond March 31, 2014. This report would be required to include specified information relating to these contracts, including an analysis of whether the contract resulted in the displacement of trial court employees.

The bill would provide that its provisions are severable.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 71621 is added to the Government Code, to read:

71621. (a) If a trial court intends to enter into a new contract, or renew or extend an existing contract, for any services that are currently or customarily performed by that trial court's employees, or that were performed or customarily performed by that trial court's employees as of July 1, 2012, all of the following requirements shall apply:

(1) The trial court shall clearly demonstrate that the contract will result in actual overall cost savings to the trial court for the duration of the entire contract as compared with the trial court's actual costs of providing the same services. In comparing costs, all of the following shall occur:

(A) The trial court's additional cost of providing the same services as proposed by the contract shall be included. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the services.

(B) The trial court's indirect overhead costs shall not be included unless those costs can be attributed solely to the function in question and would not exist if that function was not performed by the trial court. For the purposes of this subparagraph, "indirect overhead costs" means the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) The cost of a contractor providing a service for any continuing trial court costs that would be directly associated with the contracted function shall be included. Continuing trial court costs shall include, but not be limited to, costs for inspection, supervision, and monitoring.

(2) The contract shall not be approved solely on the basis that savings will result from lower contractor pay rates or benefits. Contracts shall be eligible for approval if the contractor's wages are at the industry's level and do not undercut trial court pay rates.

(3) The contract shall not cause an existing trial court employee to incur a loss of his or her employment or employment seniority, a reduction in wages, benefits, or hours, or an involuntary transfer to a new location requiring a change in residence.

1 (4) The contract shall not be approved if, in light of the services
2 provided by trial courts and the special nature of the judicial
3 function, it would be inconsistent with the public interest to have
4 the services covered by the contract performed by a private entity.

5 (5) The contract shall be awarded through a publicized,
6 competitive bidding process.

7 (6) The contract shall include specific provisions pertaining to
8 the qualifications of the staff that will perform the work under the
9 contract, as well as assurances that the contractor's hiring practices
10 meet applicable nondiscrimination standards.

11 (7) The contract shall provide that it may be terminated at any
12 time by the trial court without penalty if there is a material breach
13 of the contract and notice is provided within 30 days of termination.

14 (8) If the contract is for services in excess of one hundred
15 thousand dollars (\$100,000) annually, all of the following shall
16 occur:

17 (A) The trial court shall require the contractor to disclose all of
18 the following information as part of its bid, application, or answer
19 to a request for proposal:

20 (i) A description of all charges, claims, or complaints filed
21 against the contractor with a federal, state, or local administrative
22 agency during the prior 10 years.

23 (ii) A description of all civil complaints filed against the
24 contractor in a state or federal court during the prior 10 years.

25 (iii) A description of all state or federal criminal complaints or
26 indictments filed against the contractor, or any of its officers,
27 directors, or managers, at any time.

28 (iv) A description of any debarments of the contractor by a
29 public agency or licensing body at any time.

30 (B) The trial court shall include in the contract specific,
31 measurable performance standards and provisions for a
32 performance audit by the trial court, or an independent auditor
33 approved by the trial court, to determine whether the performance
34 standards are being met and whether the contractor is in compliance
35 with applicable laws and regulations. The trial court shall not renew
36 or extend the contract prior to receiving and considering the audit
37 report.

38 (C) The contract shall include provisions for an audit by the
39 trial court, or an independent auditor approved by the trial court,
40 to determine whether and to what extent the anticipated cost

1 savings have actually been realized. The trial court shall not renew
2 or extend the contract before receiving and considering the audit
3 report.

4 (9) The term of the contract shall not be more than five years
5 from the date on which the trial court approves the contract.

6 (b) This section does not preclude a trial court or the Judicial
7 Council from adopting more restrictive rules regarding the
8 contracting of court services.

9 (c) This section does not apply to a contract in any of the
10 following circumstances:

11 (1) The contract is between a trial court and another trial court
12 or a local government entity for services to be performed by
13 employees of the other trial court or employees of the local
14 government entity.

15 (2) The contract is for a new trial court function and the
16 Legislature has specifically mandated or authorized the
17 performance of the services by independent contractors.

18 (3) *The services contracted for are of such a highly specialized*
19 *or technical nature that the necessary expert knowledge,*
20 *experience, and ability cannot be obtained from the court's trial*
21 *court employees.*

22 ~~(3)~~
23 (4) The services are incidental to a contract for the purchase or
24 lease of real or personal property. Contracts described in this
25 paragraph, known as "service agreements," shall include, but not
26 be limited to, agreements to service or maintain office equipment
27 or computers that are leased or rented. Contracts described in this
28 paragraph shall not include agreements to operate equipment or
29 computers.

30 ~~(4)~~
31 (5) The legislative, administrative, or legal goals and purposes
32 cannot be accomplished through the utilization of trial court
33 employees because of the need to protect against a conflict of
34 interest or to ensure independent and unbiased findings in situations
35 where there is a clear need for an independent, outside perspective.

36 ~~(5)~~
37 (6) Due to an emergency, a contract is necessary for the
38 immediate preservation of the public health, welfare, or safety.

39 ~~(6)~~

(7) The contractor will conduct training courses for which appropriately qualified trial court employee instructors are not available from the court, provided that permanent instructor positions shall be filled through the process for hiring trial court employees.

(8) *The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation through the process for hiring trial court employees would frustrate their very purpose. This paragraph shall not apply to the services of official court reporters.*

SEC. 2. ~~Section 1 of 71621 of the Government Code, as added by Section 1 of this act, shall apply to any contract entered into, renewed, or extended after the effective date of this act. Any contract entered into, renewed, or extended by a trial court between the date this act is enacted and the date this act becomes operative that does not comply with Section 1 of this act shall terminate 90 days after the date this act becomes operative, unless the contract contains an earlier termination date. The contract may be renewed or extended in compliance with Section 1 of this act.~~

SEC. 3. (a) *Each trial court shall provide a report by no later than February 1, 2014, to the chairperson of the Joint Legislative Budget Committee and the chairpersons of the Senate Judiciary Committee and Assembly Judiciary Committee if the trial court entered into a contract between July 1, 2013, and the effective date of this act, for services that were provided or are customarily provided by its trial court employees and that contract has a term extending beyond March 31, 2014. The report shall provide the following information for each of these contracts:*

(1) *A copy of the contract.*

(2) *An analysis of whether the contract would have been permissible under the standards set forth in Section 71621 of the Government Code, as added by Section 1 of this act.*

(3) *An analysis of whether the contract resulted in the displacement of trial court employees.*

(4) *An analysis of whether the contract involves the use of contractors to perform the type of services that were customarily performed by trial court employees.*

(b) *It is the intent of the Legislature to consider the reduction of future budget appropriations to each trial court by the amount of any contract analyzed pursuant to subdivision (a) if the*

1 *Legislature concludes that the contract would not have been*
2 *permissible under the standards provided in Section 71621 of the*
3 *Government Code, as added by Section 1 of this act.*

4 ~~SEC. 3.~~

5 *SEC. 4.* The provisions of this act are severable. If any
6 provision of this act or its application is held invalid, that invalidity
7 shall not affect other provisions or applications that can be given
8 effect without the invalid provision or application.

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